

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TRACY SOMERVILLE, Appellant,

vs.

Secretary, WISCONSIN DEPARTMENT OF TRANSPORTATION, and
Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondents.

Case 7
No. 64631
PA(der)-110

Decision No. 31685-A

Appearances:

Donald C. Erickson, Fryberger, Buchanan, Smith & Frederick, P.A., 302 West Superior Street, #700, Duluth, Minnesota 55802, appearing on behalf of Tracy Somerville.

Paul E. Nilsen, Assistant General Counsel, Department of Transportation, P.O. Box 7910, Madison, Wisconsin 53707-7910, appearing on behalf of the Respondents.

DECISION AND ORDER

This matter is before the Commission on the merits¹ of an appeal of a decision to deny the request to reclassify the Appellant's position. Appellant contends that her position should have been reclassified from Payroll and Benefits Specialist (PBS) 2 to 3. An evidentiary hearing on the merits of the dispute was held on February 20, 2007 before Kurt M. Stege, as the designated Hearing Examiner. The parties filed post-hearing arguments, the last of which was received on April 30, 2007. The hearing examiner issued a proposed decision on May 21, 2007. No objections were filed by the requisite due date of June 20, 2007.

At all relevant times, Tracy Somerville (Appellant) has been employed in District 8 of the Department of Transportation (DOT), with offices located in Superior.

Ms. Somerville spent approximately 5% of her time providing administrative support to management for district labor/management meetings and negotiations, and 30% of her time as the training coordinator for the district. The remainder of her work time related to the provision of payroll and benefits services to District employees, who numbered approximately 125. For the most part, her duties were accurately reflected in her position description and they related to such payroll and benefits programs as payroll processing, leave accounting, Worker's Compensation, Family Medical Leave Act, COBRA, retirement benefits, work schedules, travel expenses, and fringe benefits.

¹ The Commission has previously ruled on Respondents' timeliness objection. DOT & OSER (SOMERVILLE), DEC. NO. 31685 (WERC, 6/06).

During the relevant time period, each one of DOT's eight district offices employed a Payroll and Benefits Specialist. The positions are referred to as district payroll coordinators in this decision. At all relevant times, the district coordinators worked in tandem with DOT's central office payroll and benefits staff to provide the full range of payroll and benefits services to district employees. The district coordinators would typically obtain at least some of the relevant information and either input the information into an electronic database or pass the information on to the staff in the central office. As a general rule, the district coordinators were responsible for the routine activities but central office staff was responsible for the most complex transactions and issues. The district coordinators did not typically perform the full range of duties for any of the payroll and benefits subject areas. Appellant, and the other district coordinators, also served as the contact person for central office staff who had questions of fact relating to payroll and benefits topics. The Appellant performed all of the limited set of duties that had been delegated by central office to the district offices.

At least on some occasions, Appellant had assistance from limited term staff to perform data entry of payroll information.

Throughout the period from 2000 through 2004, the Appellant worked under general supervision. Her on-site supervisor did not have subject matter expertise regarding payroll and benefits questions.

During the same period, Appellant's position has never been identified as a developmental or entry position, i.e. a position in which a newly hired employee is expected to progress to a higher classification level after the passage of time.

The relevant portions of the Payroll and Benefits Specialist classification specification read as follows:

Payroll and Benefits Specialist 2

This level is either an entry or an objective level for positions performing payroll and/or benefits work. Entry level positions operate under close progressing to limited supervision and are assigned a variety of tasks that are progressively more difficult and complex and which are intended to develop the necessary knowledge, skills and abilities to progress to the higher level.

Positions allocated to this level as an objective level operate under general supervision and perform payroll and benefits work that is limited in scope and complexity. Positions at this level refer the more complex questions and issues to a higher level payroll and benefits specialist and/or to the agency central payroll office. Positions audit, verify and process payroll information; orient

new employees and educate existing employees regarding payroll and/or benefits alternatives; and monitor a variety of payroll and benefits programs/activities. Final determinations on payroll and benefits issues are limited to the more routine or recurring activities. Work activities of a more complex nature are resolved by higher level payroll and benefits positions. Typically, these positions are organizationally located in a division, district, region, campus department or an equivalent organizational sub-unit's payroll and benefits office, however a limited number may be found in the agency's or campus/central payroll and benefits office.

Payroll and Benefits Specialist 3

Positions at this level are distinguished from those at the 2 level by the responsibility for making final determinations on payroll and benefits issues of a complex nature (as opposed to routine, recurring determinations at the 2 level) rather than having those complex issues resolved by higher level payroll positions. Positions allocated to this level operate under general supervision and perform the full range of activities (i.e. from routine to complex) in two or more of the following areas for a majority of the time: (1) establish and maintain payroll records for multiple appointment/employment types which may include classified, unclassified, limited term and, in the university system, academic staff, faculty, graduate assistants, research assistants or student hourly; (2) process and monitor time and attendance records; (3) explain benefits programs and consult with employees regarding benefits and impact of moving between appointment/employment types; (4) coordinate the Worker's Compensation and/or Unemployment Compensation program(s); (5) prepare and submit monthly insurance reports; or (6) reconcile detailed and complex appointment and payroll information for positions with multiple funding sources and requirements within the UW system. Positions may be organizationally located in a division, district, campus, region or an equivalent organizational sub-unit in the agency's central payroll and benefits office.

Appellant's responsibilities did not include the "most complex payroll and benefits-related functions" for District 8 staff.

For classification purposes, the Appellant's responsibilities were substantially identical to those of the PBS 2 positions in the other DOT districts.²

² All of the Payroll and Benefit Specialists assigned to individual Transportation Districts were classified as PBS 2 except two positions that were identified as "confidential."

For classification purposes, the Appellant's responsibilities were more limited and less complex than the PBS 3 positions that were assigned to remote (non-central) offices in other agencies, such as in institutions operated by the Department of Corrections (DOC) or the Department of Health and Family Services (DHFS). In contrast to the DOT structure where DOT's central office has not delegated authority to district coordinators to make payroll and benefits determinations, the other two agencies have delegated that authority to the remote offices.

The Commission issues the following

ORDER³

Respondents' decision to deny the request to reclassify the Appellant's position from Payroll and Benefits Specialist 2 to 3 is affirmed and this matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of July, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

³ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

DOT & OSER (Somerville)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This appeal arises from Respondents' decision not to reclassify Ms. Somerville's position from PBS 2 to PBS 3, effective October 17, 2004. Appellant has the burden of proof and must establish by a preponderance of the evidence that the Respondents' decision not to reclassify her position to the requested level was incorrect. *MAYER ET AL. V. DHSS & DER*, CASE NO. 95-0002-PC (PERS. COMM. 12/7/95). The burden is on the Appellant to show that the majority of her duties were better described at the requested level, i.e. PBS 3, rather than merely showing that the decision to classify it at the PBS 2 level was incorrect. *DER (CHIAPETTA)*, DEC. NO. 30760 (WERC, 1/2004).

Reclassification and progression

The term "reclassification" is defined in Sec. ER 3.01(3), Wis. Adm. Code, as follows:

"Reclassification" means the assignment of a filled position to a different class . . . based upon a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent.

The definition indicates that reclassification may occur where there has been a logical and gradual change *or* where the incumbent has attained a specified level of education or experience. This second basis for reclassifying a position is frequently detailed within the operative class specifications when the class series is identified as a progression series. Pursuant to Sec. ER 1.02(32):

"Progression series" means a classification grouping whereby the class specifications or position standards specifically identify an entry and full performance objective level. The full performance objective level within a progression series means the classification level that any employee could reasonably be expected to achieve with satisfactory performance of increasingly complex duties or the attainment of specified training, education, or experience.

For purposes of the present case, only one component of the PBS series is identified as a progression series. The PBS 1 class definition identifies it as "an objective level classification," so it is not part of a progression. However, the definition statement for the PBS 2 class shows that it can either be used to classify objective level positions performing duties that are somewhat more limited in scope and complexity than the higher PBS 3 class, *or* to classify entry level positions in which the incumbent is under closer supervision while learning work, described at the PBS 3 level, that is of wider scope and greater complexity than will be performed by an objective level PBS 2 position:

This level is either an entry or an objective level for positions performing payroll and/or benefits work. Entry level positions operate under close

progressing to limited supervision and are assigned a variety of tasks that are progressively more difficult and complex and which are intended to develop the necessary knowledge, skills and abilities to progress to the higher level.

Positions allocated to this level as an objective level operate under general supervision and perform payroll and benefits work that is limited in scope and complexity. Positions at this level refer the more complex questions and issues to a higher level payroll and benefits specialist and/or to the agency central payroll office.

Appellant contends that during the several months prior to the October 2004 effective date of her requested reclassification, she spent the majority of her time performing objective level PBS 3 work. The specifications establish that a position must “progress” from an entry level position in order to be reclassified from PBS 2 to PBS 3. Consequently, in order to qualify for the requested reclassification in 2004, Appellant must show two things: 1) that she was performing objective level PBS 3 work in the period immediately before the effective date,⁴ and 2) that during the period from the last time her position had been classified, she had progressed from working under “close progressing to limited” supervision in an entry level position.

Appellant does not meet this second requirement. It is undisputed that her previous position description, which she signed in June 2000 and her personnel manager signed in June 2001, shows that she was performing under “general” supervision at that time, which is the last time her position had been classified.⁵ Her level of supervision was unchanged from 2000

⁴ An incumbent who occupies a position that has been reclassified may only be regraded to the higher class level if s/he has “performed the permanently assigned duties and responsibilities for a minimum of 6 months.” Sec. ER 3.015(3)(b), Wis. Adm. Code.

⁵ The reclassification request that Appellant’s supervisor submitted in October 2004 included the following background information:

On 06-05-00 this position was submitted for a reallocation to P&B Spec 2-Confidential performing similar duties as [the incumbent coordinator in District 5]. The Reallocation request was held in BHRS for one year until it was denied, approved as updated and returned on 06-21-01.

In that time period, Somerville was naturally progressing in responsibility, experience, and more difficult complex job duties in the P&B Spec 2 classification. Also in that time period (effective May 6, 2001 and updated May 20, 2001) the Payroll and Benefits Specialist 1-5 Classification Series was changed to include district P&B Spec 3 positions with a full range of duties progressing from a level 2 responsible for making final determinations on payroll and benefits issues of a complex nature under general supervision. After the denial of the reallocation, Somerville continued to be concerned about the level of the classification of her work as compared with [central office] P&B positions

through 2004.⁶ The record shows that she did not occupy an “entry” level position during this period, so her position does not qualify for reclassification.

Therefore, even if the Appellant could show that the duties she was performing in October 2004 were best described at the PBS 3 level, she has failed to show that her position meets the requirement for reclassification⁷ from PBS 2 to 3 and her appeal fails.

Classification level of the duties assigned

The parties have offered various arguments relating to the proper classification level for the collection of duties assigned to the Appellant’s position as of the October 2004 effective date. In addition to concluding that the Appellant’s position does not qualify for progressing to the requested level via reclassification, the Commission finds that the Appellant has not satisfied her burden of showing that her permanently assigned duties in 2004 were better described at the PBS 3 level than the PBS 2 level.

The class specifications

The basic authority for classifying positions is the classification specifications as they are written and approved by the Office of State Employment Relations. DWD & OSER (SCHULTZ), DEC. NO. 31326-A (WERC, 4/2007).

⁶ There is also nothing in the record indicating that DOT has hired its district payroll and benefits coordinators at a PBS 2 entry level while identifying PBS 3 as the objective level for those positions.

⁷ Reclassification reflects changes that occur to a position over a period of time. In contrast, “reallocation” reflects abrupt changes. The latter term is defined in ER 3.01(2):

“Reallocation” means the assignment of a position to a different class by the director [of OSER] as provided in s. 230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;
- (e) The correction of an error in the previous assignment of a position;
- (f) A logical change in the duties and responsibilities of a position; or
- (g) A permanent change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

One of the Appellant’s central theories in this matter is based on the following sentence found in the PBS 3 definition statement: “Positions may be organizationally located in a division, *district*, campus, region or an equivalent organizational sub-unit in the agency’s central payroll and benefits office.” (Emphasis added.) According to the Appellant, the reference to “district” was added to the definition some time after the specifications were initially promulgated and, consequently, her district coordinator duties fall within the PBS 3 definition. This theory was also set forth in the original reclassification request submitted by Appellant and her supervisor in October 2004. However, Appellant’s contention that there was a sudden change in the language of the specifications is consistent with a request to *reallocate* her position (to either correct a previous classification error or to reflect the change) but it is inconsistent with a request to reclassify her position. The question of whether or not Appellant’s position satisfied the requirements for reallocation is outside of the scope of this appeal.

The analysis of the proper classification level is based on the duties that have been assigned to the position as of the effective date of the decision being reviewed, in this instance October 2004. OSER (ROH), DEC. NO. 30951-A (WERC, 10/04). While the Appellant offered certain evidence relating to duties that she was performing on a temporary basis,⁸ only permanently assigned duties may serve as the basis for a change in a position's classification unless the work has been performed for a number of years and the timing of future changes cannot be predicted with any degree of certainty. GUTIERREZ V. DOT & DER, CASE NO. 96-0096-PC (PERS. COMM. 4/11/97); also see OSER (DANIELSON) and OSER (SMITH), DEC. NOS. 31977, 31978 (WERC, 1/07);

In her post-hearing brief, Appellant contended that the evidence showed she "made final determinations on all payroll and benefit issues at the district level *that could be made at the district level*. . . . [I]t was the policy of the district office to resolve payroll and benefit questions at the district level and not contact the Central Office staff *on most issues*." (Emphasis added.) Appellant's contention is consistent with the conclusion that DOT's central office has granted a limited scope of authority to the district coordinators but has retained the authority to make the more complex determinations.

The key witness who explained the relationship between the district coordinators and the payroll and benefits central office was Ann Wunrow, who is a supervisor in the central office and directly supervises DOT positions at both the PBS 2 and 3 levels. Wunrow also had relevant experience from: 1) serving as a member of the small committee that began work in 1997 to revise the PBS specifications; 2) serving as a longstanding member of the statewide Payroll Council which is comprised of representatives of all state agencies; and 3) working as a PBS 3 with the Department of Corrections. Wunrow's testimony established that during the relevant time period, the DOT payroll and benefits system for employees in the eight transportation districts consisted of a PB Specialist in each district who typically initiated the payroll and benefits work for the district's employees, and personnel in DOT's central office who adjusted, manipulated or fully entered the work coming from the districts. Central office staff dealt with the more complex questions and problems within their areas of expertise.

The Appellant's responsibilities are consistent with the PBS 2 definition which describes objective level positions that "refer the more complex questions and issues . . . to the agency central payroll office."

Comparison positions

Comparison positions are an appropriate tool for use when classifying positions. DWD & OSER (SCHULTZ), DEC. NO. 31326-A (WERC, 4/07), citing SANDERS & HUBBARD V. WIS. PERS. COMM., 94-CV-1407, 1408, DANE COUNTY CIRCUIT COURT, 11/27/96.

The best comparisons to Appellant's position are the PBS positions in the other seven DOT districts at that time. Except for two positions assigned to a confidential classification, all of the district coordinators were classified at the PBS 2 level and none were classified at the PBS 3 level.

⁸ Appellant was temporarily performing duties relating to DOT District 4 during October, in addition to her regular duties.

The evidence showed that Appellant's position was not comparable to the PBS 3 positions at DOC and DHFS, two agencies that, unlike DOT, have chosen to decentralize the payroll and benefits function by assigning it to staff at individual institutions or facilities around the state. It is these DOC and DHFS positions which are "organizationally located in a division, district, campus, region" and make the "final determinations on payroll and benefits issues of a complex nature . . . rather than having those complex issues resolved by higher level payroll positions" as set forth in the PBS 3 definition.

Based on both the closest comparison positions and the descriptive language in the classification specifications, the Appellant's position is better described at the PBS 2 level than the PBS 3 level.

Summary

The Appellant has not shown that, immediately prior to the reclassification request, the position she occupied at DOT was one "for which the 2 level ha[d] been designated as an entry level." Consequently, her position did not qualify for reclassification from PBS 2 to PBS 3. Because the Appellant has not satisfied the definition of reclassification which requires "a logical and gradual change to the duties or responsibilities of a position or the attainment of specified education or experience by the incumbent," she has not shown that the Respondents' decision to deny her reclassification from PBS 2 to PBS 3 was incorrect. In addition, DOT has chosen to organize its payroll and benefits operation by having some of the work performed in the districts and some, including the more complex issues, in the central office. This structure means that the Appellant's position, in contrast to some remote locations in other agencies, has not been assigned the duties necessary for classification at the PBS 3 level. For all these reasons, Respondents' decision must be affirmed and the appeal dismissed.

Dated at Madison, Wisconsin, this 24th day of July, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

